

Democrats slash California workers' compensation

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The California Legislature on Friday enacted a massive overhaul of the state's no-fault workers' compensation system. While purporting to increase payment schedules for injured workers with permanent disabilities that were cut by 60 percent in 2004, the legislation cuts compensation for other types of injuries and will otherwise drastically reduce treatment for injured workers.

The mammoth, 170-page bill was negotiated over the course of several months behind closed doors between the California Labor Federation, the state's largest union group, and several large, self-insured employers, such as supermarket giant Safeway Inc., the Walt Disney Company and Grimmway Farms, the state's largest organic grower.

The express goal of this cabal was to cut medical and legal costs for employers. Obviously, if the legislation did not greatly benefit such employers, they would not have pushed for it; nor would the California Chamber of Commerce and other business groups such as the Small Business Council have supported it.

Other workers' compensation participants, such as the association of lawyers who represent injured workers, and doctors and other medical providers who diagnose and treat them, were frozen out of the negotiations.

The legislation was then introduced in the last week of August by Senator Kevin de Leon of Los Angeles and Assemblyman Jose Solorio of Santa Ana—Democrats who pretend to represent poor, largely Latino workers in their districts.

Advocates for injured workers and medical providers opposed the bill at the first—and only—legislative hearing held on it, on Tuesday. “We oppose this last-minute rush to jam through workers' compensation legislation that further reduces disability compensation

and access to medical care,” said Jesse Cenicerros, president of VotersInjuredatWork.org.

Opponents explained that the bill would reduce permanent partial disability benefits for many low-wage workers, particularly compensation for workers suffering from mental problems, sexual dysfunction and insomnia, and radically reduce access to medical care in order to save employers and their insurers hundreds of millions of dollars.

In the face of this opposition, after a closed-door Senate caucus meeting, the legislation reportedly was declared dead. At that point, Democratic governor Jerry Brown swung into action. He personally lobbied lawmakers, businesses, insurance companies and other labor unions to round up enough votes to pass the legislation. The Assembly then approved the bill 66 to 4, and the Senate followed with a 34-4 vote.

In a statement released Friday, Brown called the workers' compensation proposal “an extraordinary bill.” Assemblyman Solorio, its co-author, called the package “a historical compromise.” Indeed, an extraordinary, historic compromise of the interests of injured workers in favor of employers and their insurers.

The State Compensation Insurance Fund, the state's largest workers' compensation insurer, projects \$540 million in cuts to benefits from the legislation. The California Workers' Compensation Insurance Rating Bureau, a division of the State Division of Industrial Accidents, which runs the workers' compensation system, predicted cuts of \$880 million in 2013 and \$270 million in annual savings by 2014.

Both included in their projections cuts in payments of spinal procedures and reducing outpatient surgery center compensation rates to 80 percent of the Medicare level, which was previously pegged at 120 percent of

Medicare rates, as well as a \$150 lien filing fee and \$100 lien activation fee that medical providers would have to pay to the state to pursue their charges. These changes will be sure to cause many medical providers to simply refuse to give medical care to injured workers.

The Rating Bureau also included in its projections savings from a provision that would prohibit basing awards on loss of future earnings capacity. The State Fund included in its projections savings based on prohibiting additions to disability awards for psychological conditions, sexual dysfunctions, and sleep disorders.

Other major cost savings would arise from the bill's requirement that disputes over whether any particular medical treatment was justified go to "Independent Medical Review"—in other words, to doctors or panels of doctors who will almost surely be beholden to insurance carriers. Carriers already require that injured workers select treating doctors solely from insurance company approved panels.

Under the current system, if there is a dispute over the appropriateness of medical treatment, the matter is litigated at the Workers' Compensation Appeals Board, where advocates for the injured workers and employers and their insurance carriers can present competing arguments and medical evidence to a judge to resolve the disputes. Now "Independent Medical Review" will have the last word, without judicial recourse or review. This measure is of dubious constitutionality at best.



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